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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re Terrorist Attacks on
September 11, 2001

03 MD 1570 (GBD) (SN)

Telephone Conference

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New York, N.Y.
May 8, 2017
12:15 p.m.

Before:

HON. SARAH NETBURN,

Magistrate Judge

APPEARANCES

KREINDLER & KREINDLER LLP

Attorneys for Plaintiffs' Executive Committee

BY: JAMES P. KREINDLER

-and-

MOTLEY RICE, LLP

BY: ROBERT T. HAEFELE

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Attorneys for Defendant WAMY

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(In chambers)

THE COURT: Good afternoon. I am here with a court reporter and with my law clerk. I'm going to ask that those attorneys who intend to be speaking during this conference state their appearance. If there are other people on the line but they're just listening, I don't need their appearance made. Let me remind you that when you speak you should introduce yourself each time so that your comments can be properly attributed, and anybody who doesn't state their appearance at the outset but then decides to speak at a later time, please be sure to state your appearance at that time.

Who do I have on the line on behalf of WAMY?

MR. MOHAMMEDI: Good afternoon, your Honor. This is Omar Mohammedi on behalf of WAMY.

MR. GOETZ: Good afternoon, your Honor. Frederick Goetz for WAMY as well.

THE COURT: And on behalf of Mr. Kreindler.

MR. KREINDLER: Hi, your Honor. Mr. Kreindler himself.

THE COURT: OK. Thank you.

I have reviewed the three letters in connection with this application as well as a Politico article and the 2006 protective order that was entered into by Judge Casey.

Let me address first Mr. Kreindler's response to the accusation that the information was information that's publicly

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1 available and that should never have been designated as
2 confidential in the first place. We have had several
3 conversations already in connection with confidentiality
4 issues. This case has heightened public interest, but as Judge
5 Casey noted when he granted the protective order, there are
6 also serious allegations being made as to the defendants, and
7 until they are found responsible, it's not fair to disclose
8 information that's designated as confidential that might tend
9 to make the public think that somebody is guilty of certain
10 conduct. In this instance, it's clear that the information was
11 designated confidential. As I understand it, Mr. Kreindler,
12 nor anyone from the plaintiffs' executive committee, has moved
13 to dedesignate that information, and what I don't want is for
14 the parties to think that they can undermine the
15 confidentiality orders because, by their own likes, something
16 is not confidential or should not be confidential. The parties
17 obviously negotiated a protective order a decade ago, and I
18 expect the parties to follow it. I'm not moved by
19 Mr. Kreindler's initial remarks that the information at issue
20 here is otherwise publicly available.

21 MR. KREINDLER: Your Honor, if I could start this way,
22 I want to be very clear, I never released any confidential
23 evidence at all to Caleb Hannan or to any other reporter. John
24 Fawcett, our investigator, did not show a document or release
25 any confidential information at all. I think Mr. Mohammedi has

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1 a misunderstanding borne of maybe the overly dramatic way in
2 which the reporter wrote his article, but I want to be clear,
3 neither the document that WAMY cited or any other piece of
4 paper or any other bit of information designated confidential
5 was ever, ever, ever released by me or anyone who works for me.

6 Now, what did happen, and maybe this is why
7 Mr. Mohammedi has this apprehension about something that never
8 existed, is the reporter spoke to me about themes in the case,
9 spoke to John, and was interested in how we went about
10 connecting the dots to show the connection between lower-level
11 Saudi officials like Basnan and Bayoumi to a higher official,
12 Saudi official, Thumairy, to Thumairy's boss' boss, Sowailem,
13 from the Saudi embassy. And I apologize if we didn't put this
14 in the letter the right way, but here is what happened, so
15 there's no misunderstanding at all.

16 The FBI had released, in its report, a number of phone
17 numbers called by Bayoumi, the Saudi embassy official in San
18 Diego and L.A. Among the numbers called was a number from the
19 Saudi embassy in Washington, particularly the number of the
20 Saudi Ministry of Islamic Affairs headed by Sowailem. John
21 explained to the reporter the process, never showed him a
22 single document, never read from a document, or referred from a
23 document. What John did say is when we saw the numbers that
24 Bayoumi called, I immediately went to our data and looked for
25 this D.C. number, suspecting it was from the embassy, and this

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1 number is all over the place. It's on the Saudi website. It's
2 in the FBI reports. It's in State Department reports, and even
3 though we haven't gotten a single piece of paper from Saudi
4 Arabia yet, there is correspondence with the Saudi letterhead
5 in the files of lots of defendants. And as we've seen, there
6 is correspondence with the number of the Saudi letterhead in
7 WAMY files, but to be crystal clear, John never showed Caleb
8 that document or any other document or said anything about the
9 contents of any of those documents, simply pointed out that
10 that number, 202-3700, is public information all over the
11 place.

12 Now, when Caleb wrote up the article, he wrote it in a
13 dramatic way, that when John had the numbers Bayoumi dialed, he
14 found it on a piece of paper, but that piece of paper exists in
15 thousands of places in discovery and in the public record, but
16 the only thing we're talking about is the letterhead, just as
17 if my office number, 212-617-8181, if somebody wanted to look
18 up my number, maybe they grab some attorney-client privilege
19 and read my number that has nothing to do with anything
20 contained in that document.

21 THE COURT: Mr. Kreindler, the article explicitly
22 cites to the receipt of hundreds of thousands of pages of
23 documents, and then makes the specific notation that at the top
24 of a single page they found this note, so I think the argument
25 here, whether it's dramatic writing or not, is that the import

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1 of the narrative is that as a result of the documents that you
2 received, you received information that allowed you to connect
3 these dots, and I think that that is disclosing information,
4 even if you're not disclosing the specific number, but
5 information that was set forth in a confidential document.

6 MR. KREINDLER: Yes, the reporter's description is
7 really not accurate, because when he says at the top is a note,
8 what he's referring to is just the Saudi letterhead which has
9 the phone number, which Mr. Mohammedi supplied in this and
10 probably a thousand other documents. What John said is with
11 that number, I looked it up and found that it's the Saudi
12 embassy Ministry of Islamic Affairs headed by Sowailem, so the
13 reporter wrote it in a way that it's not wrong, but it's not
14 accurate; it creates an implication. It creates the
15 implication that John somehow pulled a document that said the
16 letterhead says this number is the Saudi embassy Ministry of
17 Islamic Affairs, and that's not what happened.

18 Listen, I don't fault Mr. Mohammedi for being
19 concerned or suspicious, but had anyone asked me, I would have
20 explained this and made clear that John never ever read or
21 showed anything from a document, including the letterhead, to
22 this reporter or anyone else. From the very beginning of the
23 case, we've been very careful, because there are a lot of
24 reporters interested. And of course, the only thing we said
25 is: We can never show any document. You can read the

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1 complaint and read court filings. So it's not a crazy reading
2 for Mr. Mohammedi to make, but it's an incorrect reading, and
3 what he suspects happened absolutely never happened.

4 THE COURT: OK. Let me hear from either Mr. Mohammedi
5 or Mr. Goetz.

6 MR. MOHAMMEDI: Thank you, your Honor. I'd just like
7 to mention if WAMY's document was not described and it was not
8 mentioned in the interview, why would the reporter mention it?
9 Whether the confidential document had been the subject of the
10 disclosure with the reporter, it was the needle in the haystack
11 that Mr. Kreindler and his team found, and your Honor, even
12 worse, the context by which WAMY's document was described in
13 relation to the information provided put it in bad light. And
14 even though the document does not describe exactly what the
15 article is, but when you look at page 6 where the reporter
16 says, "In their 15 years on the case, Kreindler's team hadn't
17 persuaded the U.S. government to provide them much of anything
18 useful," and then he goes on and he says, "But they had spent
19 more than a decade legally compelling some of the largest
20 charities in the Middle East," and he goes on and then says,
21 "U.S. government knew these charities had provided financial
22 and logistical support for the people and groups American
23 officials label as terrorists" -- when he put that within the
24 context, it makes it even worse the way WAMY document was,
25 "they found needle in the haystack," and that is the problem we

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1 have with Mr. Kreindler's conversation with the reporter, and
2 the information specifically referred to that document, which
3 is the needle in the haystack. So it's actually even worse,
4 and that's exactly what Judge Casey said in his order:

5 "Most, if not all, of the numerous defendants to these
6 consolidated actions are accused of either committing the
7 terrorist acts of September 11, 2001, or providing material
8 support to those who did. Many of the same defendants will be
9 asked to turn over a vast array of private and confidential
10 information during discovery, much of which will have little or
11 no bearing on the resolution of these actions but will be
12 subject to widespread public scrutiny with prejudicial effects
13 in the absence of a protective order."

14 This is the reason why Judge Casey issued this order
15 for this type of information, the context by which the article
16 mentioned WAMY documents, and that's the problem we have, your
17 Honor. If the reporter did not have any information of WAMY
18 documents, which you have in front of you, he would never
19 mention WAMY's documents as the needle in the haystack. That
20 is the problem, your Honor, we have with Mr. Kreindler and his
21 communication with the reporter.

22 THE COURT: OK. I tend to agree with WAMY here that
23 the information that was disclosed did violate the letter of
24 the agreement. The agreement does make clear that summaries or
25 abstracts of the documents are confidential as well, and as

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1 counsel just mentioned, the information that Mr. Kreindler was
2 trying to convey to the reporter could just as easily have been
3 conveyed without making the direct link between confidential
4 documents that were provided in this case and your ability to
5 connect the dots.

6 I do find, Mr. Kreindler, that this is a breach of the
7 confidentiality requirement. As I ordered a few weeks ago with
8 respect to the applications that came in more generally about
9 the Politico article, there is heightened interest in this
10 case, and I'm certainly not going to prohibit anybody from
11 speaking to the press, but the parties need to really be
12 careful here because of the reasons that Judge Casey first
13 referenced when he entered this order. It is really unfair to
14 the parties who will be turning over a lot of confidential and
15 personal information to have those documents portrayed in a
16 light that has a particular viewpoint, and I believe that this
17 article -- and I just have a hard time believing that the
18 journalist came up with this bent, this viewpoint, on his
19 own -- does reveal as a technical matter information that was
20 provided in a confidential document.

21 Going forward, Mr. Kreindler, to the extent you are
22 going to be continuing to speak to the press, or any other
23 lawyer in this case, I expect the parties to hew much more
24 closely to the confidentiality order and to be exceedingly
25 discreet in the information that they reveal.

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1 I'm not going to sanction Mr. Kreindler with any
2 monetary sanction or otherwise. Consider this a first warning,
3 and it's my hope that I don't get these applications again. I
4 do find that there was a breach, but I'm not going to enter a
5 particular sanction.

6 MR. MOHAMMEDI: Your Honor, can I say something about
7 the sanction? Monetary damages are not the most important
8 things for us. I believe Judge Casey and I do believe that the
9 district court has a great deal of discretion as to the remedy
10 for violating a confidentiality or protective order, and even
11 outside the case, even Judge Casey's order, anything the judge
12 could relieve as part of the disclosure of any defendant's
13 documents should be ordered. We also believe that maybe that's
14 very, very harsh, but I think that is the remedy to make sure
15 that plaintiff will not do that in the future, preclusion of
16 this particular document being used in evidence in this case,
17 and I really do believe this is fair and reasonable for us, for
18 this Court to issue this order.

19 THE COURT: Mr. Kreindler, do you wish to be heard?

20 MR. KREINDLER: Yes, your Honor. First of all, I
21 don't even know what's in the document. Mr. Mohammedi sent an
22 English translation to you, not to us, and I'm not sure what
23 he's talking about. If he's talking about the Arabic text of
24 something I don't know what it says, all I can say is at this
25 moment we're not making use of unknown Arabic text. If he's

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1 talking about public information, he cannot exclude public
2 information. I think what he's trying to do is try and exclude
3 the link between Sowailem and Bayoumi, and neither of them are
4 his clients and neither of them have anything to do with WAMY,
5 so I'm not sure what he's asking for.

6 MR. HAEFELE: Your Honor, may I be heard for a moment?

7 THE COURT: Yes.

8 MR. HAEFELE: My concern from what I'm hearing from
9 what Mr. Mohammedi's saying is that the punishment related to
10 something Mr. Kreindler did should be passed on to the entire
11 plaintiffs, if I'm understanding him, he's asking for the
12 document to be precluded from evidence based on something that
13 Mr. Kreindler did and precluded from evidence on behalf of all
14 plaintiffs, if I'm understanding him right. If I'm
15 misunderstanding, I'll stay quiet now.

16 MR. MOHAMMEDI: Your Honor, I think that in response
17 to Mr. Kreindler, I'm asking that the document be precluded,
18 not the link. Since the document was revealed in the article,
19 to the reporter should be precluded, and this is actually
20 within the remedies that are prescribed in the judge's order.
21 And I think WAMY should not be suffering, should not have to
22 give -- I mean, how are we to prevent them from making any
23 other communications with the reporters? And also WAMY's being
24 put in bad light now, and like I said, evidence shown in the
25 report, and the article said, is being put in bad light, even

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1 though the document itself is not really what it is, but the
2 way it was described, based on that, I do believe that it was a
3 communication, private communication between the kingdom of
4 Saudi Arabia and WAMY, and it was revealed to the reporter and
5 it violated the confidentiality agreement. Therefore, I think
6 we should be entitled to preclude that.

7 THE COURT: OK.

8 MR. KREINDLER: I have to add something. You keep
9 saying something that's utterly untrue. This document was not
10 revealed to a reporter. No reporter was shown this document or
11 had this document read to him. All you're talking about is the
12 phone number on the letterhead, which is public information, so
13 I really wish you would stop saying that someone showed this
14 document to a reporter, because it never happened.

15 THE COURT: OK. I've heard enough. I have read all
16 these letters and thought hard about this.

17 As I stated earlier, Mr. Kreindler, by describing to
18 the journalist that having received these confidential
19 documents from WAMY and then having identified this particular
20 piece of information you were able to connect the dots. I do
21 believe that that was information that was confidential and you
22 were not entitled to disclose the source of your information.
23 As counsel for WAMY has said, you could have easily either left
24 that out or said you found this information through publicly
25 available sources, so I do believe it is a violation of the

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1 confidentiality order.

2 Mr. Kreindler, I'm speaking.

3 MR. KREINDLER: OK.

4 THE COURT: I am not going to impose a sanction at
5 this time. I'm not going to impose a monetary sanction against
6 Mr. Kreindler, and I'm certainly not going to preclude the use
7 of this document, because I don't believe that the specific
8 contents were, in fact, disclosed; it was more the light in
9 which the documents were presented that was inappropriate. At
10 this point, I am not going to impose a particular sanction.

11 Mr. Kreindler, this is the second time we've had to
12 deal with this Politico article, and it's my hope that you will
13 be more careful as you continue to litigate this case,
14 including given that you are an executive member of the
15 plaintiffs' executive committee and you have a heightened role
16 here representing all of the plaintiffs, and I don't want you
17 to lose sight of that.

18 MR. KREINDLER: I won't.

19 THE COURT: OK. Thank you, everybody.

20 MR. KREINDLER: Thank you.

21 MR. MOHAMMEDI: Thank you, your Honor.

22 (Adjourned)